**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

**Civil Writ Petition No. 211 of 2004 (S/S)**

Govind Singh Bhotiya others ..... Petitioners

Versus

U.P.S.R.T.C. and others ..... Respondents

Date of decision: 21, September 2004

For the approval of:

**Hon'ble Mr. Justice P.C. Pant.**

- Whether the order/judgment should be sent to the reporters for reporting? ( Yes )

- Whether the reporters be allowed to see the judgment? ( Yes )

**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

**WRIT PETITION NO.211 (S/S) OF 2004.**

1. Sri Govind Singh Bhotia,
2. Sri Daya Krishana Arya,
3. Rajendra Prasad Sah, ... Petitioners.

Versus

1. Sri Uttar Pradesh State Road Transport Corporation, Therikothi, Lucknow (Uttar Pradesh) through its Managing Director.
2. Uttaranchal Parivahan Nigam, Head Office at Dehradun through its Managing Director,
3. Regional Manager, Uttaranchal Parivahan Nigam, Kumaon Region, Nainital ... Respondents

Sri Rajendra Dobhal, Learned Counsel for the petitioners.
Sri A.N. Sharma, Advocate for respondent No.1.

**HON'BLE P.C.PANT J.**

1. By means of this writ petition, moved under Article 226 of Constitution of India, the petitioners have sought mandamus commanding responding respondents to make payment of gratuity, leave encashment and arrears of salary.

2. Brief facts of the case, as narrated in the writ petition, are that petitioner No.1 retired from the office of the Regional Manager, U.P. State Road Transport Corporation on 31.03.2002 from the post of Senior Accountant while the petitioner No.2 retired on 31.08.2002 from the office of said Transport Corporation (respondent No.1) as Station Superintendent and petitioner No.3 got retired from the office of the Regional Manager U.P. S.R.T.C on 30.09.2002 from the post of Accountant. The petitioners are getting pension from the respondents every month. However, payment of gratuity, leave encashment and arrears of difference of salary (in view of the recommendation of 5$^{th}$ Pay Commission) with effect from 01.01.1996 till the date of retirement and other dues have not been made to the petitioners even after making the

representation. The chart showing the dues to the petitioners as alleged in the writ petition is as under:

| | Petitioner No.1 | Petitioner No.2 | Petitioner No.3 |
|---|---|---|---|
| 1. Gratuity | 1,64,306.00 | 1,53,499.00 | 1,43,615.00 |
| 2. Encashment | 5,093.00 | 14,353.00 | 15,023.00 |
| 3. Arrear of 5th Pay commission | 23,734.00 | 30,903.00 | 19,305.00 |
| 4. Arrear 1/99 to 2/99 | 569.00 | | |
| 5. Family planning arrear | 3,800.00 | 3,230.00 | 2,660.00 |
| 6. 4% D.A. Arrear Jan.,2002 to Aug.,2002 | 2,224.00 | 798.00 | 2,165.00 |
| 7. 3% D.A. Arrear Jul.,2002 to Aug.,2002 | 418.00 | | |
| 8. Leave encashment arrear Jul. 96,97 Jan.,98. | 2,361.00 | 1,707.00 | 3,161.00 |
| 9. Commutation less deposited by Deptt. | - | 6,400.00 | |

The petitioners have alleged that as per the information from the Director (Pension), Directorate of U.P. Indra Bhawan, Lucknow gratuity appear to have been with-held for the reason that respondent No.1 failed to deposit its necessary contribution to the concerned authority. Copies of this letter from the Director of pension U.P. are annexed as Annexures IV, V and VI to the writ petition. The petitioners have also claimed 18% interest per annum on the dues payable to them as the respondents have failed to make the payment.

3. Respondent No.1 in its counter affidavit has not disputed the facts as to the non-payment of gratuity, leave encashment and arrears of difference of revised pay to the petitioners, but defended themselves by stating in their counter affidavit that Central Government vide its Notification dated 27.10.2003 (copy

Annexure CA-1 to this counter affidavit) has mentioned that Uttaranchal Transport Corporation has come into existence from the date of said Notification and the successor Corporation has succeeded assets and liabilities pertaining to the area of State of Uttaranchal. The liability of the answering respondent was only in respect of the pension which is being paid to the petitioners. In this regard the answering respondent No.1 has stated that order darted 22.08.2003 (copy Annexure CA-2) passed in writ petition No.1285 of 2002 (M/S) is being complied with. In the counter affidavit U.P. S.R.T.C., in its para 11 states that in case any liabilities found on the part of the answering respondent it should be given six months time as it is passing through financial crisis.

4. Respondent No.2 and 3 have filed their separate counter affidavit on behalf of the newly created Uttaranchal Transport Corporation and have stated that they have also succeeded their heavy losses to the tune of Rs. 110 crores vide Notification dated 27.10.2003 (Annexure CA-1) issued by the Central Government. It is further stated in the counter affidavit filed on behalf of respondent No.2 and 3 that they are not liable to pay the dues claimed by the petitioners nor the interest thereon as no order was issued by the Government of U.P. or U.P. S.R.T.C. regarding payment of arrears of difference of salary applying the recommendation of the 5$^{th}$ pay commission.

5. I heard learned counsel for the parties and perused the affidavits, counter affidavits and rejoinder affidavits filed by the parties alongwith the Annexures annexed thereto.

6. The short question for consideration before this court is that whether the liability to make the payment of gratuity, leave encashment and arrears of difference of pay as claimed by the petitioners lies with the respondent No.1, i.e. U.P.S.R.T.C. or the Uttaranchal Transport Corporation. Also, it is to be decided whether the petitioners are entitled to interest, if so at what rate.

7. Admittedly petitioners were employees of U.P. State Road Transport Corporation. It is also admitted that petitioners were retired in the year 2002 from the employment of said

Corporation (respondent no.1). It is also disputed that Uttaranchal Transport Corporation came into existence only in the year 2003 which is clear from the Notification issued by the Central Government (copy Annexure CA-1 to the counter affidavit). Respondent No.1 has taken the stand that its liability is only respect of payment of pension which he is making to the petitioners and the rest of the liability lies with the successor Corporation, i.e. Uttaranchal Transport Corporation. The submission on behalf of respondent No.1 appears to be misconceived for the reason that even the pension has been paid by the respondent no.1 only in compliance of this court's order dated 15.03.2004 passed in writ petition no.22 (S/S) 2004, a copy of which is Annexure III to the counter affidavit of the respondent No.1. Sub clause (7) of clause 5 Part III of the said Notification dated 27.10.2003 reads as under:

*"The payments other than pension due to those who have retired, till the formation of corporation of Uttaranchal, shall be made by successor Corporation, where the Region from where the employee had retired, is situated."*

8. The above Notification dated 27.10.2003 is silent as to the payment of gratuity, leave encashment and arrears of difference of pay of the retired employees prior to 27.10.2003. The express liability of the State of Uttaranchal is in respect of the employees who have been allocated State of Uttaranchal. Now this court has to see if expression 'other than pension' includes the liability regarding the gratuity, leave encashment and difference of salary in respect of the period prior to creation of Uttaranchal Transport Corporation of the employees who have retired before the creation of said corporation (respondent no.2). In the considered view of this court it can not said to be just and proper to fix liability of payment of gratuity & leave encashment on Uttaranchal Transport Corporation (Respondent No.2 in respect of the employees who have never worked with the new Corporation. The expression "other than pension due to those who have retired till the formation of the corporation of Uttaranchal" in aforesaid in aforesaid notification does not include retiremental benefits and the payments due to those employees

who had retired prior to said Notification dated 27.10.2003 issued by the Central Government. That being so, the liability of the successor corporation is only in respect of arrears of difference of salary. Therefore, this court has no hesitation in holding that as far as gratuity, leave encashment etc. of the employees who have already retired before aforesaid notification lies only with the U.P. S.R.T.C. (respondent 0.1) particularly when it has failed to make its contribution regarding gratuity etc. in respect of its employees.

9. As far as the difference of arrears of revised pay of the employees retired prior to said notification is concerned it depends on the implementation of the recommendations of the 5th Pay Commission by the State of U.P. and U.P. S.R.T.C. to its employees. From the record it is not clear if the recommendations as to the new pay scales w.e.f. 01.01.1996 have been issued. In view of the principle of law laid down in Officers and Supervisors of I.D.P.L. Versus Chairman and M.D., I.D.P.L. 2003 (5) Supreme Today 157 the sick corporations can not be compelled to make payment as per the recommendations of the 5th Pay Commission unless they have adopted the same. Also, this court feels that since the dispute relating to the liability between the U.P. S.R.T.C. and Uttaranchal Transport Corporation was genuine after 09.11.2000 when the State of Uttaranchal was created till the Uttaranchal Transport Corporation came into existence, the liability to make payment of interest @ 18% on such conditions can not be said to be just at this stage. Here it is pertinent to mention that from the Annexures IV, V and VI annexed to the writ petition the petitioners were deprived of payment of gratuity due to the fault on the part of U.P. S.R.T.C. (respondent No.1) who failed to Annexures relating to petitioners are issued by the Director of Pension U.P. Lucknow.

10. In these circumstances, for the reasons as above the writ petition is allowed against respondent No.1 for the payment of gratuity, leave encashment and other admissible dues payable to pensioners on their date of retirement within a period of three

months falling which they shall be liable to pay the same with 6% interest per annum thereon from the date of their retirement till the payment is made. As to the difference of arrears of salary with effect from 01.01.1996 is concerned the same shall be paid by respondent No.2 provided the V Pay Commission recommendations are already implemented. No order as to costs.

Dated: September 21, 2004. **(P.C.Pant J)**
S.S.Negi.